Submitted by
WILLIAM I. SIEGEL

IN THE

Supreme Court of the United States

October Term, 1953

CAMILO WESTON LEYRA,
Petitioner,

—against—

WILFRED L. DENNO, WARDEN OF SING SING PRISON, OSSINING, NEW YORK,
Respondent.

No. 385 Miscellaneous

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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32 CASE PRESS, 30 Ferry Street, N. Y. C.— COrtlandt 7-0484-0485

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STATEMENT

Petitioner seeks a review of the decree of the United States Court of Appeals, Second Circuit, affirming an order of the United States District Court, Southern District of New York, which denied a petition for a writ of habeas corpus sought by petitioner against the respondent as Warden of Sing Sing Prison, in the State of New York. Petitioner is incarcerated in that institution pursuant to a judgment of the County Court of Kings County which convicted him of the crime of Murder in the First Degree for the killing of his father, Camilo Weston Leyra, Sr., and sentenced him to execution.

HISTORY OF THE CASE

The trial here involved was the second trial of an indictment charging petitioner, in two counts, with the murder of his father and mother. He was first convicted of murder in the first degree on both counts and was separately sentenced to death with respect to each conviction. The judgments were unanimously reversed by the Court of Appeals with an opinion reported in 303 N. Y. 353. Upon the retrial directed by the Court of Appeals, petitioner was again convicted, this time of murder in the second degree for the killing of his mother, Katherine (which judgment is now on a pending appeal in the Appellate Division of the Supreme Court, Second Judicial Department) and of murder in the first degree for the killing of his father. On appeal to the Court of Appeals, the judgment of conviction for murder in the first degree was affirmed by a divided court. Majority and dissenting opinions are reported in 304 N. Y. 468.

On November 19, 1952, Hon. Charles Froessel, a Judge of the Court of Appeals, granted a stay of execution with respect to the judgment of conviction for murder in the first degree, pending a petition to this Court for a writ of certiorari to be addressed to the Court of Appeals. The petition was denied by this Court, without opinion, on March 16, 1953 (345 U. S. 918, 73 S. Ct. 730, Black and Douglas, *JJ.* being "of the opinion that petition should be granted"). An application for rehearing was also denied by this Court on April 27, 1953 (345 U. S. 946, 73 S. C. 835).

Thereafter petitioner, being incarcerated under the judgment of execution, filed a petition for a writ of habeas

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corpus in the United States District Court for the Southern District of New York which was considered by Ryan, *D.J.*, and denied by him with an opinion appearing at 113 Fed. Supp. 556. The District Judge issued a certificate of probable cause for an appeal to the Circuit Court of Appeals and also granted a stay of execution pending such appeal.

Briefs were filed upon the appeal in the Circuit Court of Appeals and full argument was heard by that bench (Chase, *Ch.J.* and Clark and Frank, Circuit Judges). The order of the District Court was affirmed, Frank, *C.J.* dissenting, with majority and minority opinions appearing in 208 Fed. 2d 605. A petition for reargument was denied December 15th, 1953 and is not as yet reported.

This petition for a writ of certiorari addressed to the Circuit Court of Appeals then followed, the Circuit Court of Appeals having in the meanwhile granted a stay of execution pending the application to, and determination by, this Court of such petition.

QUESTIONS PRESENTED

Petitioner contends:

(1) The receipt in evidence on the trial of confessions made by petitioner to police officials and the district attorney violated his right of due process as a matter of law because these confessions were tainted by coercion practiced upon him by one Doctor Helfand;

(2) The receipt in evidence on the trial of confessions made by petitioner to police officers and the district attorney violated his right of due process as a matter of law because the confessions were induced by an authorized promise of leniency made by Doctor Helfand;

(3) The decision of the United States Circuit Court of Appeals is in conflict with settled state law concerning the testimonial value of opinions of expert witnesses;

(4) The decision of the United States Circuit Court of Appeals is erroneous in that it disregards the instructions of the state trial court concerning the fact of inducement and promise.

ARGUMENT

I.

In our brief in opposition to the petition for a writ of certiorari addressed to the Court of Appeals of the State of New York and denied by this Court (345 U. S. 918, 73 S. Ct. 730; petition for rehearing denied 345 U. S. 946, 73 S. Ct. 835), we fully set forth all of the record facts material to the questions presented by that petition. Our discussion traced the history of the case, outlined the evidence produced on behalf of the People on the first trial; quoted the material portions of the opinion of the Court of Appeals which disclosed the reason for reversal; similarly treated the evidence on the second trial and the opinions of the Court of Appeals, majority and minority, in deciding the case; and fully argued our position that (1) petitioner was accorded a fair trial; (2) the confessions attacked on petitioner's behalf were freely and voluntarily made without influence in the making thereof by the carry-over of the Helfand coercion or promise of immunity; (3) the issue of voluntary or involuntary confession was properly submitted to the jury under instructions which met every requirement of law and (4) no error was committed in the reception of evidence.

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It is respectfully submitted that no useful purpose would be served by a reiteration of these matters in our present brief. Instead, the Court is respectfully prayed to consider said brief as though more fully incorporated herein. Copies of said brief in proper number were, of course, duly served upon petitioner's attorneys at the time.

We deem it sufficient for the purposes of this proceeding to rely upon the reasoning of the District Court in denying the petition for a writ of habeas corpus (Opinion attached hereto as respondent's Appendix "A") and upon the opinion of the majority in the Circuit Court of Appeals (attached hereto as respondent's Appendix "B").* These opinions completely meet and negate every contention raised by the instant petition. They demonstrate completely that no federal question of due process is involved in this proceeding, meet for the consideration of this Court.

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* We do not append the dissenting opinion of Frank, C.J., because, with great deference to the learned Judge, we believe that opinion does not forward the inquiry before this Court. It concedes that the trial court's charge was proper, but finds a failure of proof "that the effect of the promises—as distinguished from the effect of the coercion—had worn off when the defendant made the later confession to the assistant district attorneys." This, be it noted, was written after the highest State Court, a Federal District Court and two Judges of a United States Court of Appeals had found to the contrary. We submit that this lone dissent runs counter to the rule enunciated by this Court in *Brown* v. *Allen*, 344 U. S. 397, 437 97 L. Ed. 469, rehearing den. 345 U. S. 946, 97 L. Ed. 1370:

> "Furthermore, where there is material conflict of fact in the transcripts of evidence as to deprivation of constitutional rights, the district court may properly depend upon the State's resolution of the issue."

II.

The Petition Should Be Denied.

Dated, Brooklyn, N. Y., February, 1954

Respectfully submitted,

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APPENDIX "A"

Opinion in United States District Court, Southern District of New York

RYAN, *J.*

This petition for a writ of habeas corpus has been filed by Camilo Weston Leyra, who is presently confined in a New York State prison awaiting execution under a sentence of death pronounced against him in the County Court of Kings County, New York, after a jury verdict of guilty of Murder in the first degree (New York Penal Law, Section 1044). Upon appeal to the New York Court of Appeals the judgment of conviction was affirmed: three judges concurred in the majority opinion; a fourth judge concurred in result invoking the provisions of Section 542 of the New York Code of Criminal Procedure, which permits that court on appeal to give "judgment, without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties."; and two judges, dissenting, voted to reverse (*People* v. *Leyra,* (1952), 304 N. Y. 468). Thereafter, an application was made to the United States Supreme Court for a writ of certiorari to review the questions arising under the Constitution which the New York Court of Appeals certified were presented and necessarily passed upon, to wit: "whether the defendant was deprived of due process guaranteed by the Fifth and Fourteenth Amendments thereof in the admission into evidence of the confessions of the defendant and in the admission into evidence of the testimony given by defendant at a prior trial." This application was denied on March 16, 1953 and an application for rehearing was denied on April 27, 1953.

Appendix "A"

In the petition now before me the petitioner urges only the claim that the confessions were improperly received in evidence.

At a hearing held by me it appeared that no relevant facts were in dispute and no request was made that testimony be taken. I called for and received the case on appeal before the New York Court of Appeals (which contains a complete stenographic transcript of the trial), and the petition filed for a writ of certiorari.

From the record of the proceedings heretofore had, I conclude that the petitioner is not barred from making this application for he has "exhausted the remedies available in the courts of the state by any available procedure." Section 2254, 28 USCA. I also conclude and am satisfied from the record before me that "the state process has given fair consideration to the issues * * *, and has resulted in a satisfactory conclusion." *Brown* v. *Allen* (1953), 344 U. S. 443, 463. I find from the record that the federal constitutional rights of petitioner have been protected, that there has been no denial of due process, and I conclude that the petition should be denied.

It appears that a prior judgment of conviction of Murder in the first degree was reversed on appeal by the New York Court of Appeals (*People* v. *Leyra,* (1951) 302 N. Y. 353), and that the conviction under which petitioner is now imprisoned, was had on a second trial under the same indictment, which charged petitioner with the unlawful killing of his father and mother, on January 10, 1950. Reversing

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the conviction on the prior trial and ordering a new trial that Court found that

> "The verdict rests largely upon alleged confessions of the defendant. If they were properly received in evidence, followed by proper instructions from the court, the verdict would be clearly warranted, and we could not interfere with the execution of sentence for these brutal crimes. The conclusion is inescapable, however, that grave and prejudicial errors were committed with respect to these alleged confessions, so fundamental in nature as to require a reversal and a new trial" (pp. 356-7).

The evidence offered on the prior trial concerning these confessions and the circumstances under which they were made is analyzed and meticulously stated in this opinion in which all the judges of this appellate court of last resort in New York State concurred.

Testimony was given as to statements made to a physician and psychiatrist, Dr. Max Helfand, beginning at about 5.30 p.m. on January 13, 1950, and as to later statements made to John J. Meenahan, a captain of the New York City Police Department, to William Herrschaft, an employee of petitioner's deceased father, who had known petitioner for about 10 years, and to two assistants in the office of the District Attorney of Kings County, New York.

The court noted of Dr. Helfand that (p. 359):

> "This doctor, unconnected with the police department or the prosecutor's office, had been called to the police station by the District Attorney, who outlined the case to him. The doctor had also been 'briefed' by Captain Meenahan, as is manifest from

the questions he asked. He agreed to talk to defendant upon condition that there be no one else in the room; he knew, however, that the room was wired and that the interview would be electrically recorded by a recording machine, which was specially set up that day. The police and the district attorney were in the basement of the police station, where they overheard the entire interview and permitted it to continue uninterruptedly.

"The doctor spent an hour or an hour and a half with defendant. A transcript of the recorded interview shows that he told defendant at the outset: 'I'll tell you what the purpose of my talk to you is. I want to see if I can help you.' To this defendant answered: 'Yes, Doctor.' The doctor asked him about his sinus condition and the treatment he had had, and in the course of the interview said: 'I'm your doctor.' "

The court later in its opinion stated (p. 363):

" * * * this court is unwilling to assent to the doctrine that representatives of the State may thus employ a relationship they established between the doctor and this defendant, which is of a character that our public policy holds privileged (Civ. Prac. Act, Sec. 352), in order to obtain a confession out of defendant's own mouth without warning and under the circumstances here disclosed (*People* v. *Fernandez,* 301 N. Y. 302; *People* v. *Esposito,* 287 N. Y. 389; *People* v. *Furlong,* 187 N. Y. 198, 212)."

The court with reference to the other statements of petitioner wrote (p. 365):

"Whether the coercion which we find implicit in defendant's statement to the doctor extended over

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> and into the later confessions to Meenahan, Herrschaft and the assistant district attorneys remains a question of fact for determination by the jury * * *. These confessions should have been separately considered in the light of the coercion existing at the time of defendant's statement to the psychiatrist, and only if the jury were satisfied beyond a reasonable doubt that such coercion had ceased to influence defendant could they consider the later confessions. Only thus would due process of law be accorded defendant."

The court also noted that it was contended on behalf of petitioner that his statement had been induced by promises of leniency; as to this it wrote (p. 366):

> "Moreover, here again the jury should have been instructed to consider separately the later confessions, in the light of any promise that may have been made during defendant's statement to the doctor (*Lyons* v. *Oklahoma,* 322 U. S. 596)."

It is not in dispute that substantially the same evidence was presented on both trials as to the circumstances surrounding the making of the statements by the petitioner. It was upon this same proof that the New York Court of Appeals unanimously held, on the first appeal, that the submission of the voluntary character of these statements would result in a denial of due process only as to the statement made to Dr. Helfand. The trial judge on the second trial so ruled. The judges, dissenting from affirmance on the second appeal to the Court of Appeals, did not depart from their holding on the prior appeal that the voluntary nature of the other statements should be submitted as a

factual issue to the jury for its determination and not excluded by the court as a matter of law. The two dissenting judges stated that they had concluded that the conviction should be reversed because the trial judge had "charged unequivocally that Dr. Helfand had promised defendant, 'in order to induce him to confess,' that he would not be prosecuted for murder in the first degree, that such promise was authorized by the district attorney and that defendant confessed in reliance upon it. Consequently, as the trial court went on to charge, that confession was inadmissible as a matter of law. (See Code Crim. Pro., Sec. 359.)." *People* v. *Leyra,* 304 N. Y. 468, 473 (1952). It was by the application of local law—the provisions of the New York Code of Criminal Procedure—that the dissenting judges concluded that the trial court's ruling "became the law of the case" and "that any and all other confessions to the district attorney or those associated with him in the investigation and prosecution of this very homicide, must also be deemed to have been induced by that promise, and likewise inadmissible." That they were led to that conclusion by considerations of local law and not by a holding that constitutional rights of due process had been denied is manifest by the statement that "other considerations, considerations separate and apart from the district attorney's promise, may have prompted defendant to confess to his friend. I am willing to assume, therefore, that the court was warranted in leaving to the jury the question whether or not the promise induced defendant's confession to Herrschaft * * * " (p. 473).

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Appendix "A"

The local law applicable to the admission in evidence of a confession of a defendant (Sec. 395, N. Y. C. C. P.) provides:

> "A confession of a defendant, whether in the course of judicial proceedings or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats, or unless made upon a stipulation of the district attorney, that he shall not be prosecuted therefor * * *."

As I read these opinions I find none of the judges of the New York Court of Appeals holding that the submission to the jury of the question of the voluntary character of any of petitioner's subsequent statements was in violation of due process.

The ruling of the majority of the New York Court of Appeals on matters of local law and of state concern I am required to accept; of course, I do so without hesitation and irrespective of my personal opinion. However, it is for this district court to determine whether the petitioner has been accorded due process or whether he has been denied rights guaranteed by the United States Constitution, (*Brown* v. *Allen, supra*. 488; Frankfurter, *J.*), and as to these federally created rights "State adjudications of questions of law cannot, under the habeas corpus statute, be accepted as binding" (p. 506). This congressional grant of jurisdiction under the Supremacy Clause of the Constitution "merely expresses the choice of Congress how the superior authority of federal law should be asserted" (p. 510).

Appendix "A"

I approach the task with "an alert deference to the judgment of the state court" *Malinski* v. *New York* (1945) 324 U. S. 401, 417.

Petitioner contends in this petition that he was deprived of his constitutional right of due process by reason of the fact (1) that the New York Court of Appeals erred in affirming his conviction in that it was founded upon evidence of confessions obtained by means of mental coercion, duress and promises of immunity; and (2) that the subsequent confessions were so close in point of time and circumstances to the first coerced confession that they also should have been ruled inadmissible.

It was with the applicable local law established by the Court of Appeals that the indictment was moved for the second trial. At this trial, testimony was again received of the statement of petitioner to Dr. Helfand but "merely on the question as to whether or not whatever statements the defendant made were inspired by Dr. Helfand, an issue raised by defense counsel. This was received after the trial court had cautioned counsel at length, followed by a most explicit and detailed instruction to the jury as to its illegality phrased in most simple and understandable language they they might not consider it on the issue of guilt under 'any circumstances,' but were limited to a consideration of its effect on the later confessions, and that these too were to be entirely disregarded if found to be dependent upon it in any respect whatsoever, a distinction which each individual juror signified that he understood." (*People* v. *Leyra*, 304 N. Y. 468, 471.) At this trial, testimony was also received of the statements of the

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petitioner to Captain Meenahan, to Herrschaft and to two assistant district attorneys.

When the transcript of the statement of petitioner to Dr. Helfand was received in evidence on the second trial the trial judge at the time instructed the jury (case on appeal, p. 559, folios 1676-77):

> "You must not consider any of the matters read by the District Attorney by way of questions and answers, upon the guilt of this defendant. It is not to be considered in that regard in any shape, form or manner. The sole question is here, what does this statement indicate as to whether the doctor suggested certain things to the defendant; in other words, put it in his mind or in his mouth, as affecting some other statements he allegedly made later to some other people. In other words, did the doctor suggest certain details, which the defendant later employed in giving an alleged account of what transpired when he spoke to Meenahan, Herrschaft and the Assistant District Attorneys."

The record shows that the trial began on December 10, 1951 and was concluded on December 21, 1951; the transcript of petitioner's statement to Dr. Helfand was received in evidence on December 19, 1951. At the close of the court session on December 11, 1951 the trial judge in the absence of the jury made the following statement on the record, without objection from petitioner's attorneys (case on appeal, p. 163, folios 487-89):

> "The Court is of the opinion that it is the duty of the District Attorney to call Dr. Helfand to the witness stand, that the defendant should not be

> placed in a position where he is compelled to call a witness who might be termed hostile and certainly antagonistic to the defense. The Court has conferred with the District Attorney and counsel for the defense and it is agreeable to the parties to this action that Dr. Helfand be called as a witness by the prosecution, with the understanding that he is to give full testimony in the same manner that he did at the previous trial."

This was followed on the next day by a ruling of the trial judge in the presence of the jury when Dr. Helfand was called as a witness (case on appeal, p. 251, folio 751):

> "The point I make is this. Let us be clear about it. If this witness testifies to any incriminating statements made by this defendant, I want to say at the outset, that the jury must not in anywise, shape, form or manner consider such statements as indicating any guilt on the part of this defendant."

And, later in his charge the trial judge instructed the jury (case on appeal, p. 893, folios 2678-79):

> "I charge you, gentlemen, as a matter of law, that the so-called Helfand confession was not voluntarily made; that it was due to mental coercion practiced by the physician upon the defendant. That, in and of itself, renders it worthless as evidence of guilt. It may not be regarded by you, even in the slightest degree, as any evidence of guilt."

With these special instructions and this charge the constitutional rights of the petitioner were fully and completely protected, with regard to the Helfand statement. *Lyons* v. *Oklahoma, supra.*

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Appendix "A"

The trial record shows that Dr. Helfand began talking to petitioner at about 5 p.m. on January 13, 1950; that he was introduced to petitioner by Meenahan (p. 309, folio 927). That Meenahan then went down to a basement room and listened to a loud speaker on a recording machine "wired" up to the room where Dr. Helfand and the petitioner were talking (p. 327, folio 981); that the district attorney and police officers were there too. While listening Meenahan heard the petitioner say to the doctor "I would like to speak to Captain Meenahan." * * * "He seemed to be a good egg, and I would like to talk to him if I could" (p. 310, folio 929). It was about 6.30 p.m. when Meenahan went into the room (p. 327, folio 981); Dr. Helfand remained for a few minutes and left; Meenahan spoke to petitioner for about an hour; it was during this conversation that petitioner, while they were alone, again narrated the gory details of the murders (pp. 314-16; folios 941 *et seq.*). There is no evidence that Dr. Helfand spoke to petitioner after 6.30 p.m. or that at any subsequent time he was in his immediate presence.

The record also shows that William Herrschaft testified that he spoke to petitioner in the captain's office of the 88th precinct on the evening of Friday, January 13; that petitioner and Herrschaft were alone in the room at the time; that the following conversation was had between them:

> "A. He (the petitioner) said, 'Here is the combination of the safe. I want you to get administrative powers and operate the company,' and then I (Herrschaft) said to him, 'What's this all about?

What are you giving me the combination of the safe for? And why the powers to operate the company?'

* * * * *

"And he said, 'Well, you know what it's all about; I did it.'

* * * * *

"I said, 'Do you mean that you killed your own mother and father?'

* * * * *

"He said, 'I did it' again; he repeated it.

* * * * *

"I asked him why; why he would do anything like that,' and he said, 'Oh, I don't know; I guess I just blew my top' " (pp. 349-50, folios 1047-49).

Before Herrschaft went into the captain's room to speak to petitioner, he had waited in another room for approximately 2½ to 3 hours (folio 1079). (It was during part of this time that Dr. Helfand was with the petitioner.) Herrschaft did not know and no one told him that the captain's room had been "wired" and he "didn't even have the slightest idea" that a psychiatrist had been questioning the petitioner (p. 361, folio 1083). The entire talk in the captain's room between Herrschaft and petitioner was "not very long * * * possibly five minutes" (p. 364, folio 1091); then Meenahan came into the room, and Herrschaft went out leaving Meenahan with petitioner (p. 371, folio 1111).

The trial record also shows that the petitioner while still in custody of the 88th precinct was interrogated by two assistant district attorneys later that same evening of January 13, at about 10 p.m.

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It was on this showing that the trial judge received these three later statements of petitioner in evidence, leaving their voluntary character to the jury. This conformed to New York procedure and with the constitutional requirements of due process. The New York rule has been stated in *People* v. *Weiner* (1928), 248 N. Y. 118, 122:

> "The question whether there is any evidence of the existence of a voluntary confession is one of law. In the first instance this question must of course be decided by the trial judge. If the evidence shows without dispute that the confession was extorted by force or fear or if a verdict that it was freely made would be clearly against the weight of evidence, the judge should reject it. Only where a fair question of fact is presented should the jury be permitted to determine whether the confession is voluntary. If there is no such conflict and if the evidence points clearly to the involuntary nature of the confession the judge should exclude it as without evidence to support it."

I have noted that the trial judge ruled that the statement to Dr. Helfand was not voluntarily made, and instructed the jury that it was "due to mental coercion" and "worthless as evidence of guilt." But a conclusion that a statement of a defendant has been coerced does not necessarily render all subsequent statements inadmissible.

> "If the relation between the earlier and later confession is not so close that one must say the facts of one control the character of the other, the inference is one for the triers of fact and their conclusion, in such an uncertain situation, that the confession should be admitted as voluntary, cannot be a denial of due process." *Lyons* v. *Oklahoma, supra,* 603.

Appendix "A"

The "closeness" to the earlier invalid confession which precedes subsequent confessions is not to be measured alone in terms of the time, be it minutes, hours or even days, which elapse between the statements of the defendant. The test to be applied concerns the conditions under which a defendant was kept or restrained during the interval between the statements and the effect those prior conditions may have had upon his mind, will and ability to exercise free will and to choose between making or not making a further statement. The Supreme Court "has never gone so far as to hold that making a confession under circumstances which preclude its use, perpetually disables the confessor from making a usable one after those conditions have been removed." *United States* v. *Bayer* (1947), 331 U. S. 532, 540-41.

With respect to petitioner's statement to Meenahan, the trial judge charged (p. 894, fols. 2680-82),

> "Therefore, it is now clear that the Helfand confession may not, under any circumstances, be considered by the jury as evidence of guilt. The Helfand confession becomes material with regard to another problem which I shall discuss with you later.
>
> "We shall now consider the so-called Meenahan confession. First, we must determine whether the confession was made. If you find that such confession was in fact made, as claimed by the prosecution, you must then determine whether the provisions of the law governing confessions which I have already called to your attention have been violated, and, thus, rendered the confession worthless as evidence of guilt.

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Appendix "A"

"* * * The burden is upon the People to satisfy you beyond a reasonable doubt that it was voluntary and not made under a promise of leniency.

"* * * I charge you that you are bound to consider the established fact that Dr. Helfand practiced illegal coercion upon the defendant and made authorized promises of leniency to him. The presumption is that such coercion and promise of leniency continued to affect the defendant's later confessions; unless the prosecution has convinced you, beyond a reasonable doubt, from all the credible evidence in the case, that such coercion and promise of leniency did not extend over and affect the later confession made to Meenahan. Unless you are so convinced, the later confession made to Meenahan must be entirely disregarded and not considered by you as evidence of guilt."

With respect to the Herrschaft statement the instructions were, in part, as follows (p. 895, fols. 2683-84):

"* * * Was it voluntary? Did the Helfand coercion and the promises extend over and affect this confession? Did the prosecution sustain the burden of establishing, beyond a reasonable doubt, that the coercion and promises did not carry over and affect the Herrschaft confession? * * * It is only if you find, beyond a reasonable doubt, that the confession was voluntarily made and true that you may consider it as evidence of guilt."

The trial judge further charged with regard to the so-called Assistant District Attorneys' confessions to the same effect, and the jurors were instructed that they must be satisfied beyond a reasonable doubt that the promise of leniency made by the doctor "did not carry over and

induce and influence the making of this confession" (p. 895, fol. 2685). It was further charged that if the jury rejected all the confessions the petitioner would have to be acquitted since the remaining evidence in the case was insufficient to predicate a verdict of guilt (p. 896, fol. 2687).

The contention of petitioner that the coercion and promise referred to did in fact carry over and into each of the subsequent confessions and that of the prosecution that they did not so extend and that they were not induced by any promise of leniency were pointed out to the jury by the trial judge (p. 896, fols. 2687-88). This issue was clearly defined and submitted to the jury.

The above instructions fairly raised the issue as to the voluntary character of the statements.

I conclude that the facts are not irreconcilable with a finding by a jury that the subsequent statements of petitioner were voluntary. Here, I find that since "different inferences may fairly be drawn from admitted facts, the trial judge and the jury are not only in a better position to appraise the truth or falsity of the defendant's assertions from the demeanor of the witnesses, but the legal duty is upon them to make the decision." *Lyons* v. *Oklahoma, supra,* 602.

The petition is denied.

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APPENDIX "B"

Majority Opinion in United States Court of Appeals, Second Circuit

CLARK, *Circuit Judge*:

This appeal is by Camilo Weston Leyra from the denial of his petition for a writ of habeas corpus wherein he asserted a violation of constitutional due process in his trial and conviction for murder and sentence to death in the courts of the State of New York. His first trial and conviction, for murder of his parents, resulted in a reversal by a unanimous Court of Appeals of New York for improper admission of a confession. *People* v. *Leyra,* 302 N. Y. 353, 98 N. E. 2d 553. A second conviction, for his father's murder,[1] was affirmed by a majority of the Court of Appeals, *People* v. *Leyra,* 304 N. Y. 468, 108 N. E. 2d 673; a petition for a writ of certiorari to the Supreme Court of the United States was denied, *Leyra* v. *New York,* 345 U. S. 918, and thereafter an application for a rehearing was denied, 345 U. S. 946. Thereupon he brought a petition for a writ of habeas corpus to the district court, which Judge Ryan denied in a reasoned opinion reported in D. C. S. D. N. Y., 113 F. Supp. 556. This appeal followed.

The issue here concerns the use in the trials of confessions by petitioner to the brutal hammer murders of his elderly parents. As presented on the second appeal, after the first appeal had established the invalidity by reason of mental coercion and promises of leniency of a confession

[1] He was actually convicted for murder in the first degree of his father, and murder in the second degree of his mother; an appeal from the latter conviction (we are told) is pending in the Appellate Division, Second Department, of the New York Supreme Court.

made to a Doctor Helfand, the question was whether this invalidity also permeated certain other and later confessions, which the jury considered and by their verdicts held to be freely made, to such an extent that as a matter of law they, too, must be held invalid. Since a majority of the state Court of Appeals has held that the issue as to their voluntary character was correctly submitted to the jury, the question before us is narrowly whether that ruling as to the nature and state of the evidence was so unjustified as to be a denial of due process of law requiring federal interference to protect petitioner in his constitutional rights. Whatever of anomaly there may appear to be in a bench of one or more federal judges thus reviewing a decision to which in all details an outstanding state tribunal has given the most careful and conscientious attention, there can be no doubt of our duty to do just this; indeed, it is often reiterated in Supreme Court opinions, of which the latest are *Brown* v. *Allen,* 344 U. S. 443, 458, 507, 508, and *Stein* v. *New York,* 346 U. S. 156, 170, 180-182. We cannot escape the heavy responsibility involved in this review.

We therefore turn at once to the confessions which precipitated the issue. We need not deal with the details of the crime, which are sufficiently described in the state court opinions. It appears that after discovery of the bodies of the Leyras as found in their home, made in fact by petitioner, he came almost immediately under suspicion. After two days and a night of intermittent questioning in the custody of the police, and after his complaints that his sinus was bothering him, petitioner was introduced to a Dr. Max Helfand, physician and psychiatrist. Dr. Helfand was unconnected with the police department, but, unknown

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to petitioner, had been summoned and briefed by the District Attorney. Left alone with petitioner in a wired room, they talked for an hour and a half, while the police listened to and recorded the conversation. The statements thus elicited from petitioner were admitted at the first trial and were the basis of the reversal, where they were held to be coerced as a matter of law. They were brought into the second trial partly by petitioner in attempting to show that details of later confessions had been planted in his mind by Helfand, and the rest by the State in rebutting this contention. This testimony was properly isolated in the charge to the jury as bearing only on the voluntary nature of later confessions, and its admission is not here in issue.

At the close of the case the trial judge charged that the statements elicited by Helfand were, as a matter of law, induced by coercion, and hence not to be considered on the issue of guilt. He further charged that, as a matter of law, the statements were induced by an authorized promise of leniency and were therefore invalid. In general the two invalidating factors of mental coercion and inducement by promise were linked together in the judge's references to them, as where he told the jury "that you are bound to consider the established fact that Dr. Helfand practiced illegal coercion upon the defendant and made authorized promises of leniency to him. The presumption is that such coercion and promise of leniency continued to affect the defendant's later confessions; unless the prosecution has convinced you, beyond a reasonable doubt, from all the credible evidence in the case, that such coercion and promise of leniency did not extend over and affect the later confession made to Meenahan. Unless you are so con-

vinced, the later confession made to Meenahan must be entirely disregarded and not considered by you as evidence of guilt." But since, as noted below, the issue has developed more specifically with respect to the effect of the promise, it is well to note exactly what appears to be the one instance where the judge did treat this, at least comparatively speaking, as a separate matter, *viz*:

> "I charge you, gentlemen, as a matter of law, that the so-called Helfand confession was not voluntarily made; that it was due to mental coercion practiced by the physician upon the defendant. That, in and of itself, renders it worthless as evidence of guilt. It may not be regarded by you, even in the slightest degree, as any evidence of guilt. I charge you also, as a matter of law, that this so-called Helfand confession is invalid and may not be considered by you as evidence of guilt, on the further ground that Dr. Helfand, who was then acting for the District Attorney, made a promise to the defendant in order to induce him to confess, and, thus, did induce him to confess by reason of such promise; the said promise being, in effect, that if he made such confession, he, the defendant, would not be prosecuted for the capital offense of murder in the first degree, but, possibly, for a lesser crime. Therefore, it is now clear that the Helfand confession may not, under any circumstances, be considered by the jury as evidence of guilt. The Helfand confession becomes material with regard to another problem which I shall discuss with you later."

This other problem with regard to which the confession to Dr. Helfand did become material was, as stated above, that of carry-over of the invalidating factors to affect the

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other confessions. This problem developed because on the first appeal the court, differentiating the accused's responses to Dr. Helfand (the so-called Helfand confession), had said that whether the coercion found implicit in the accused's statement to the doctor carried over and into the later confessions was a question of fact for the jury which there had never been properly submitted to it. *People* v. *Leyra, supra,* 302 N. Y. 353, 365, 366, 98 N. E. 2d 553. So the second trial was devoted substantially to the question of the admissibility of the later confessions, the first one to Police Captain Meenahan, the next (with the police out of the room) to the accused's business associate Herrschaft, and the final one in extensive narrative to two assistant district attorneys. Not all of these stood on the same basis. The one to the police captain, directly following the activities of Dr. Helfand, was naturally the most vulnerable. The testimony of Herrschaft, to whom he said, "I did it," while not necessarily showing premeditation, was, on the other hand, the most natural; the dissenting judges did not question the jury's finding as to the voluntary character of these statements and no issue is raised as to them here. Moreover, they well might have bearing on the other confessions; thus counsel for the respondent stresses petitioner's failure to complain to Herrschaft, his associate and friend, that he had been coerced to confess to the police captain. And the later statements to the assistant district attorneys, made according to their testimony when his demeanor was normal and when he was cool and calm and told the entire story, might well be regarded as of persuasive effect.

In addition to the testimony of the various participants in or witnesses to the confessions—with the exception of

the accused, who did not take the stand in the second trial —there was extensive testimony by two qualified psychiatric experts as to the possibility of a carry-over of the mental coercion and promise of leniency made by Dr. Helfand to affect the later confessions. The two experts differed pretty completely; the one for the accused gave his view that there would be such a carry-over, while the contrary conclusion was expressed by a doctor appearing for the State, who was cross-examined in great detail and at length when offered both in chief and on rebuttal. While the first questions put to these doctors were framed in terms of explicit reference to the mental coercion, yet upon direct prompting of the court they were extended to and did specifically include the effect of the promises.[2]

[2] The testimony of Dr. Murphy, the expert for the prosecution, is now being attacked, with a suggestion that he substantially took back this testimony toward the close of his examination. Such a contention might perhaps have been urged to the jury, but seems wholly unjustified when carried to the point of a ruling of law eliminating his testimony. The acceptance of Dr. Murphy's testimony by the jury may well have been a consequence of confidence inspired by his care not to make over-dogmatic assertions; indeed, his first response was to deny knowledge with "reasonable certainty" of the effect of even the mental coercion, and to make it clear that he was only expressing his opinion. Another reason may have been that the unusually searching cross-examination to which he was subjected led to his buttressing of his opinions by careful and precise detail as to the attitude and response of the accused under the various circumstances of the several confessions and explanation of the reasonable deductions to be made therefrom. This detailed proof was of course as directly pertinent to the effect of the promises as to that of the threats. Specifically as to the promises, in addition to various repetitions of the thought that the accused had "a free will to say what he wanted," exercised in fact with "voluble details," etc., Dr. Murphy testified explicitly as to the Meenahan and Herrschaft confessions that, while it was impossible to give a definite answer, yet "I don't think that the effect of that would carry over, no, I don't." Then the immediately succeeding cross-examina-

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There can be no doubt that, if expert testimony is competent to do so, these doctors did create a conflict in the

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tion reiterated questions based at times upon the promises alone and the doctor repeatedly answered to deny that a carry-over effect was a necessary inference. And he specifically stated as to the Herrschaft statement that he thought it "voluntary"—"given freely because he chose to do so." And at one time after commenting on the "awful lot of confusion in this court about what is mental coercion" he made this statement, which is particularly pertinent in view of the present attempt to separate threats and promises: "Mental coercion—the words in this court are so loosely used. It is kicked around like a football, anything from a tiny bit of a dog to a boy stealing cookies, the urging such as a mother or father, urging the kid to tell if he stole cookies, or perhaps urging the person to go to the authorities and give himself up. Those are mild forms of coercion, which in my mind are not actual coercion because that individual has free will to choose to take the advice or not. They are usually in the form of persuasion. They might also depend upon the person's prestige who has been doing the interrogation."

Later, in response to pressure from the court, he did say, confining his response to "that particular instance" which was the interrogation of the accused by the assistant district attorneys *after* the Herrschaft confession, that "I don't know what effect the promise had. It is a thing which is something I cannot pass judgment on." It is not entirely clear why he so circumspectly thus isolated this one confession; and appropriate evaluation of his answer would seem properly a question of fact and not of law. But reasonable inferences may be suggested. Much earlier the cross-examiner had demanded to know if he could tell "the condition of this man that he was in two years ago, yes or no," *i.e.*, at the time when the accused made answers to the assistant district attorneys. This was just after the witness had stressed that the accused did not have to be urged or led in making those answers. Thereupon the witness again limited his response to his cautious opinion based only on the record placed before him. So his later statement seems but another attempt (after wearying hours on the stand) to reiterate the caution for which the need was pin-pointed by the earlier incident. Certainly even this testimony—and even if it be separated from the rest of his evidence —was contrary to the dogmatic opinion of the expert for the accused that the Helfand promises did carry over to control the later confessions. Were we now to say that this balanced testimony of Dr. Murphy, instead of presenting a jury issue, operated to remove from the jury all that had gone before, we should be setting a unique limitation upon the historic fact-finding function of a jury in cases where a constitutional issue is raised.

evidence justifying submission of the issue of voluntary character of the later three confessions to the jury. It was so submitted under a very full charge and the verdict of the jury may, we believe, be taken as settling the issue.

So far as affects the issue of mental coercion this seems to be accepted. But as to the issue of inducement by promises a very able dissenting opinion by Judge Fuld, concurred in by the late Chief Judge Loughran, presents a special problem. Judge Fuld says that when the judge charged that Dr. Helfand had promised the accused, to induce him to confess, that he would not be prosecuted for first-degree murder, and that this was authorized by the district attorney and induced the confession, which was therefore inadmissible as a matter of law under N. Y. Code of Criminal Procedure §395, that charge became "the law of the case" and it follows "as a matter of ineluctable logic" that all other confessions to the district attorney or his representatives must also be deemed to have been induced by the promise and be likewise inadmissible. "Accordingly, when the court further instructed the jury that it might find that the confessions to assistants of the district attorney and to a police captain—made within an hour or two after immunity had been promised—had not been induced by the promise, it pursued a course that was not only opposed to logic, but incompatible with the law of the case. That was error highly prejudicial to defendant." *People* v. *Leyra, supra,* 304 N. Y. 468, 473, 108 N. E. 2d 673.

There is no doubt of the force of the picture thus deftly etched; but we think Judge Dye for the majority has given the answer, at least so far as constitutional due process is

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concerned. In the last paragraph of the opinion, 304 N. Y. at page 472, Judge Dye says that the law of the case can be taken only from the total effect of the charge as a whole and not from isolated statements, and that the charge, while excluding the Helfand confession quite completely, nevertheless specifically allowed the jury to pass on the validity of the other confessions from the standpoint of both coercion and inducement. And he ends with the significant statement that because the trial judge had *also* ruled the confession worthless, "because a promise had been made as a matter of law, did not in any way prejudice the defendant. It was, if anything, to his advantage." Three judges concurred in this opinion; another, Judge Froessel, concurred in the result in reliance upon N. Y. Code of Criminal Procedure §542, which permits the court to give judgment "without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties."

While action by the New York Court of Appeals does not lessen our responsibility for re-examination of the question federal-wise, we do gain benefit from this careful consideration, not the less from the attitude of the fourth or concurring judge as from that of the three majority judges. For although he does not state his reasons explicitly, it seems obvious that his reliance on §542 must stem from his conclusion that petitioner could not be considered harmed by an overfavorable charge. Our independent examination of the record leads us to a like result.

Of course if it must be taken as law for this case that Dr. Helfand on behalf of the prosecutor promised peti-

tioner prosecution only on the charge of second-degree murder or less, in return for his confession, it would be difficult to see why a confession made shortly thereafter to Captain Meenahan, who took over the doctor's role, would not be as vulnerable as the admissions made to the doctor. This is the basis accepted by Judge Fuld, who therefore did not examine the nature of the evidence as to the promises. Whether we should have likewise concluded, had we been sitting as state judges of review, is not now important; for the majority rejected that conception of the law, and we can see no constitutional requirement that the trial judge's view must control throughout. Constitution-wise we are thrown back to the actual evidence and what it required. Looking at that, we do not think the trial judge's characterization of the inducement—quoted above—can properly be accepted in the extensive form claimed. It is to be noted that there the judge was giving his reason for his exclusionary ruling just made. But even if the reason can be raised to the dignity of the ruling itself, it went beyond the actual evidence in depicting a specific and clear-cut promise. The complete record of the doctor's entire performance shows no clear differentiation between threats and inducement and nowhere a specific and definite promise of a lesser charge as the reward for confession. True, the doctor's offensive activities produced certain statements of convenient vagueness from which a person of some sophistication in the law could have drawn that conclusion. Actually the accused never indicated in any way that he did make such a deduction, either in his response to the doctor's advances or in the testimony which he gave at the first trial.

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Carefully examined, the record of what the doctor said and did shows an extensive intermixture of wheedling and threats to induce the accused to admit commission of the homicides in a fit of temper. In addition to reiterated minatory language, there were many instances of his having offered to help, of his being with the accused "a hundred per cent" provided the latter told the truth, and the like. Perhaps nothing makes the unspecific character of the threats and promises more apparent than the reference chiefly relied on to show the nature of the intended inducement, the most specific statement in the record:

> "These people are going to throw the book at you unless you can show that in a fit of temper, you got so angry that you did it. Otherwise they toss premeditation in and it's premeditation. See?"

Without any thought of minimizing the despicable nature of the doctor's conduct, we do feel it necessary to conclude that there is no basis in the evidence for the sharp dichotomy between threats and promise at the basis of petitioner's appeal to us. We think the resume given by the court on the first appeal well states this intermixture of act, threat, and inducement, *viz*: "Bearing in mind the undisputed setting in which this interview was arranged and recorded, while defendant was in custody of the police; defendant's physical and mental condition at the time, already alluded to; the psychiatrist, calling himself defendant's doctor, playing upon the latter's natural fears and hopes, pressing his hands upon defendant's head with accompanying commands, and suggesting details to an unwilling mind by persistent and unceasing questioning; informing defendant that he was not morally responsible;

making deceptive offers of friendship and numerous promises, express and implied; giving assurances in a pseudo-confidential atmosphere of physician and patient; and all the attendant circumstances taken together—this interview was a subtle intrusion upon the rights of defendant and was tantamount to a form of mental coercion, which, despite the good faith of the prosecution, we may not contenance here." *People* v. *Leyra, supra,* 302 N. Y. 353, 362, 363, 98 N. E. 2d 553.

On the record, therefore, it does not seem appropriate or justified to say that, while a jury issue was presented as to the carry-over effects of the mental coercion practiced by Helfand with respect to the later confessions, yet only a single conclusion, constitution-wise, was possible as to the inducements by promise. Both really stand together as parts of one single chain of conduct with a single purpose and hardly differing acts. And we conclude that both together present a single problem properly submitted to the jury. Indeed, there would seem little doubt as to the Herrschaft confession and the later statements to the district attorneys. But we think the same conclusion is to be reached as to the Meenahan confession. Before the jury was detailed testimony as to the petitioner's attitude and apparent physical condition both before the doctor and later with the police captain, the nature and form of his responses, and the effect which all this evidence made upon two trained experts. That they differed markedly in their conclusions made it all the more a matter for the jury who saw and heard them to decide on the facts; we, who must approach the matter only from the cold record, are not justified in presenting our lately developed guesses or even

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convictions as constitutionally the only true course for the jury and judges in the state courts to follow.

We therefore find no constitutional infirmity in the procedure followed in the state courts. Consequently the petition for a writ of habeas corpus was properly denied by the district court.

Affirmed.